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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,217	10/03/2003	Michael J. Mannion	5646	3283

7590 01/31/2005  
Milliken & Company  
P. O. Box 1927  
Spartanburg, SC 29304

EXAMINER

LEE, RIP A

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/679,217

Applicant(s)

MANNION ET AL.

Examiner

Rip A. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-17 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 1, 2, 3, 5, 12-15, 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01-10-05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This office action follows a response filed on November 22, 2004. Applicants have amended claims 1-5 and 11-17. Claims 6-10 and 18-20 were canceled, and new claims 21-23 were added. Claims 1-5, 11-17, and 21-23 are pending.

#### ***Terminal Disclaimer***

1. The terminal disclaimer filed on November 22, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/679,239 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim Objections***

2. Claims 1, 2, 22, and 23 are objected to because of the following informalities: Change “nucleator” to “nucleating” (claim 1: page 3, line 1; claim 2: page 4, line 11). Appropriate corrections are required.

3. Claims 1 and 2 are objected to because of the following informalities: Please replace the term “metal carboxylic acids” with “metal carboxylates.” Appropriate correction is required.

4. Claim 3 is objected to because of the following informalities: The claim does not make sense. The claim states that said metal cation comprises a metal cation, which is redundant. The claim also states that said organic cation comprises a metal cation, which is inconsistent with the term “organic cation.” Appropriate correction is required.

5. Claim 5 is objected to because of the following informalities: Claim 5 appears to depend from claim 3, not claim 4. Please check the dependency and make the appropriate correction.

6. Claims 12-14 are objected to because of the following informalities: Insert the word “additive” between “the” and “formulation.” Appropriate correction is required.

7. Claims 14 and 15 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of previous claims 12 and 13, respectively, because both require use of the same additive formulation and at least one polyolefin. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-5, 11-17, and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites an apparent formulation containing three items: an anti-caking agent, a small size nucleating compound, and (“further comprising”) at least one nucleating compound represented by formula (I). This is not consistent with the description of the invention of the specification. The confusion is illustrated precisely in subsequent claims 22 and 23 in which the additive formulation contains “anticaking agent and

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small size nucleator compound” provided in a ratio of “nucleator compound to anticaking agent” of about 80:20. Thus, it is not clear whether the small size nucleating compound and nucleating compound represented by formula (I) are the same entity.

Ambiguity also exists in use of the term “small size.” This is a relative term and it is meaningless in its current usage. The compound may be small compared with a pellet, but it may be orders of magnitude larger than a nanoparticulate filler.

Since claim 1 has been rejected, dependent claims 2-5, 11-17, and 21-23 are subsumed under the rejection.

10. Claims 1-5, 11-17, and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 2, and 21 recite the indefinite term “less than about.” The term is indefinite because it is not clear where the upper bound of the range lies exactly. See MPEP § 2173.05(b).

11. Claims 1-5, 11-17, and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is insufficient antecedent basis for the limitation “said composition” in the claim.

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12. After a secondary search of the prior art, it is deemed that the *apparent* two-component additive formulation of anti-caking agent and at least one nucleating compound of formula (I), along with the recited properties and mass ratio, is not obvious over the closest reference to date, U.S. Patent No. 6,465,551 to Zhao *et al.*

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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***Information Disclosure Statement***

14. The references listed in the information disclosure statement of January 10, 2005, were not considered. U.S. Patent No. 4,414,999 (Basta) relates to a continuous flushing device. It is not clear how this pertains to the present invention. U.S. Patent No. 6,465,551 (Zhao *et al.*) was cited in the previous office action and need not be acknowledged repetitively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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January 25, 2005



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